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2014 MAY -8 PM 4: 00

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6749

DATES COMPLAINT FILED: Aug. 16, 2013,
Nov. 12, 2013

DATES OF NOTIFICATION: Aug. 22, 2013,
Nov. 14, 2013

DATE OF LAST RESPONSE: Oct. 21, 2013

DATE ACTIVATED: Feb. 7, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:
July 1, 2016 (earliest) / July 15, 2018 (latest)
ELECTION CYCLE: 2012

COMPLAINANT:

Cheryl Sullenger, Operation Rescue

RESPONDENTS:

Trust Women PAC and Amber L. Lockner in her
official capacity as treasurer
South Wind Women's Center, LLC
Julie Burkhart

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441b(a)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)
2 U.S.C. § 439a(b)
2 U.S.C. § 432(b)(3)
2 U.S.C. § 434(b)
2 U.S.C. § 433(b)
11 C.F.R. § 100.52(b)(5)
11 C.F.R. § 104.3
11 C.F.R. § 110.1(d)
11 C.F.R. § 110.9
11 C.F.R. § 113.1(g)
11 C.F.R. § 114.2(b)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

The central allegation in this matter is that Trust Women PAC and Amber L. Lockner in her official capacity as treasurer (the "Committee") and Julie Burkhart, the Committee's President, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using Committee funds and resources to operate a for-profit business operated by Burkhart, the South Wind Women's Center, LLC (the "Clinic"), including by making a direct loan to the Clinic and making purchases of goods for use by the Clinic.¹ The Complaint also alleges that the Clinic's repayment of the direct loan and in-kind purchases were corporate or excessive contributions to the Committee.² The Complaint further alleges that the Committee made numerous reporting errors, related to and independent of its transactions with the Clinic.³

The Response acknowledges that the Committee paid for items for the Clinic's use, but contends that the Clinic reimbursed the Committee for those payments and argues that the Committee did not use its funds or resources to operate a for-profit business.⁴ The Response asserts that, even assuming *arguendo* that the Committee's funds were used for such purposes, the Committee is not barred from doing so by the Act or the Commission's regulations.⁵ With respect to its disclosure reports, the Committee asserts that it has adequately complied with all

¹ See Compl. (Aug. 16, 2013); see also Supp. Compl. (Nov. 12, 2013); see also Letter from Complainant to the Reports Analysis Division ("RAD"), FEC. (Dec. 12, 2013).

² *Id.*

³ *Id.* The Complaint further alleges that in 2012, the Committee should have registered as a political committee with the Kansas Secretary of State because it made a contribution to a Kansas state senator's campaign. Compl. at 5. Because this allegation is not within the Commission's jurisdiction, we make no recommendation as to this allegation.

⁴ Resp. at 1, 7 (Oct. 21, 2013). The Office of Complaints Examination and Legal Administration ("CELA") clarified with counsel that the October 21, 2013, Response was filed on behalf of the Committee and Burkhart and that they will not be filing a response to the Supplemental Complaint. The Clinic has not filed a Response to the Complaint or Supplemental Complaint.

⁵ *Id.*

1 reporting requirements and has retained an auditor to rectify any erroneous reports, thus the
2 Commission should close the file.⁶

3 As set forth below, we conclude that the Act and regulations do not prohibit the
4 Committee from making disbursements to the for-profit entity, and we recommend that the
5 Commission find no reason to believe that the Committee and Burkhart violated 2 U.S.C.
6 §§ 439a(b), 432(b)(3), and 433(b) by making a loan to the Clinic and purchasing goods for the
7 Clinic, and dismiss as a matter of prosecutorial discretion violations of 2 U.S.C. § 434(b)
8 stemming from the Committee's disclosure of its loans to the Clinic. As for the Clinic's
9 repayment of the loan and its payment for items purchased by the Committee, we recommend
10 that the Commission, as a matter of prosecutorial discretion, dismiss the allegation that the
11 Committee, Burkhart, and the Clinic received and made prohibited corporate and excessive
12 contributions in violation of 2 U.S.C. §§ 441b(a), 441a(a)(1)(C), 441a(f). Finally, we also
13 recommend that the Commission, as a matter of prosecutorial discretion, dismiss with caution
14 the allegation that the Committee violated 2 U.S.C. § 434(b) in connection with its disclosure
15 reports.

16 II. FACTS

17 Trust Women PAC registered with the Commission as a nonconnected multicandidate
18 political action committee in 2009.⁷ Amber Lockner is treasurer of the Committee and Julie
19 Burkhart is President of the Committee.⁸ South Wind Women's Center LLC is a limited liability

⁶ *Id.* at 1, 2.

⁷ See FEC Form 1, Statement of Organization (Aug. 21, 2009).

⁸ See FEC Form 1, Statement of Organization (Aug. 2, 2013); Resp. at 8.

1 company ("LLC") that has been active and registered in good standing with the Kansas Secretary
2 of State since November 19, 2012.⁹ Julie Burkhart is the registered agent of the Clinic.¹⁰

3 In addition to Burkhart's role in both the Committee and the Clinic, the Complaint asserts
4 additional connections between the two entities. Specifically, the Complaint asserts that the
5 Committee's employees answer the phones at the Clinic; used the Committee's e-mail address to
6 respond to a Clinic inquiry; and that the Committee's website during July 2013 had a link to a
7 "clinic progress tab" which referred to the Clinic as "our clinic" and contained a photo of
8 Burkhart at the Clinic.¹¹

9 Further, in March 2013, the Committee purchased robes (\$342.80), webhosting (\$208),
10 and a washer and dryer (\$837.92) for the Clinic and made a direct \$7,000 loan to the Clinic.¹²
11 According to the Committee's disclosure reports, the Clinic repaid these amounts on August 1,
12 2013.¹³ While the Committee timely disclosed disbursements for the three purchased
13 items/services on Schedule B (Disbursements) of its 2013 April Quarterly report, it did not report
14 making any loans (direct or in-kind) during that period.¹⁴ In January 2014, the Committee
15 amended its 2013 July Quarterly report to disclose a loan owed by the Clinic in the amount of

⁹ Compl. at Attach. 13.

¹⁰ See id.

¹¹ Compl. at 6-9; Attach. 14.

¹² Resp. at 7, 8.

¹³ 2013 Amended October Quarterly Report at 7 (Apr. 23, 2014).

¹⁴ 2013 April Quarterly Report at 4 (line 27), 13-14, 18 (Apr. 15, 2013).

1 \$7,000.¹⁵ In March 2014, the Committee amended its 2013 July Quarterly report again to disclose
2 that the Clinic owed the Committee \$8,410.25.¹⁶

3 **III. FACTUAL AND LEGAL ANALYSIS**

4
5 **A. Committee Loan and Other Disbursements to the Clinic**

6 The Complaint alleges that the Committee's payments for items for the Clinic, the direct
7 loan to the Clinic, and the use of Committee employees and resources to conduct Clinic business
8 (as described *supra* at 4) amounted to the Committee operating a for-profit business in violation
9 of the Act. The Complaint also notes that the Committee disclosed receipt of a loan repayment
10 of \$8,410.25 from the Clinic, but "listed no outstanding loans on its previous reports".¹⁷

11 The Response denies that it used committee funds or resources to operate the Clinic but
12 concedes that it paid for some expenses and made a loan to the Clinic, all of which the Clinic
13 reimbursed to the Committee.¹⁸ The Response alternatively argues that even if the Committee
14 had used its funds to finance a for-profit business, the Commission's regulations would not
15 prohibit such use.¹⁹ While the Response acknowledges that Burkhart is associated with the
16 Clinic and the Committee — she filed the Clinic's incorporation paperwork and posted a photo
17 of herself at the Clinic on the Committee's website — it argues that this association does not

¹⁵ See 2013 Amended July Quarterly Report at 30 (Jan. 8, 2014).

¹⁶ See 2013 Amended July Quarterly Report at 31 (Mar. 6, 2014). There is a \$25 discrepancy between the loan amount and the repayment amount, which we cannot explain.

¹⁷ Suppl. Compl. at 1-2 ; *see also* 2013 July Quarterly Report filed Jul. 15, 2013.

¹⁸ According to the Response, "[t]he for-profit business in question has also reimbursed Trust Women PAC for all expenses cited by Operation Rescue. These reimbursements will appear on Trust Women PAC's October FEC report." Resp. at 7, 8.

¹⁹ *Id.* at 7, n.31.

1 violate the Act because "Burkhart is free to associate with whomever she chooses..."²⁰ The
2 Response also explains that the alleged Committee staffer who answered the phone at the Clinic
3 is a Clinic employee who previously interned for the Committee.²¹ The Response contends,
4 however, that the phone call and the use of the Committee e-mail address for the Clinic is a
5 "... conspiracy theory that would require the FEC to somehow infer, based on clear speculation,
6 that the two are intertwined."²² Last, the Response denies that the Committee has used any funds
7 for personal use, or otherwise embezzled funds.²³

8 The Act permits political committees to make loans.²⁴ Based on the information
9 available, the Committee's provision of loans to the Clinic — both a direct loan and in-kind
10 loans in the form of the purchase of goods — does not appear to violate the Act. Neither the
11 personal use nor commingling provisions of the Act apply here because the committee is not a
12 candidate committee, and there is no information suggesting that Committee funds were
13 commingled with the personal funds of any individual.²⁵

²⁰ *Id.* at 8.

²¹ *Id.* at 9.

²² *Id.*

²³ *Id.*

²⁴ See 2 U.S.C. § 431(9)(A)(i) (providing that a loan is a kind of expenditure).

²⁵ See 2 U.S.C. § 439a(b), 11 C.F.R. § 102.15 (defining "personal use" as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder). See also 2 U.S.C. § 432(b)(3) (providing that all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual) (emphasis added).

In defending its disbursements to the Clinic, the Committee points to *Emily's List v. FEC*, 581 F.3d 1, 21 (D.C. Cir. 2009) and the Statement of Reasons issued in MUR 5878 (*Arizona State Democratic Central Committee, et al.*), arguing that "[t]he FEC gives wide discretion on how PACs spend their funds, and does not set outer limits on PAC spending" and "... the FEC does not regulate how a PAC spends its funds." Resp. at 7, and n. 21. Those decisions do not appear to be on point. The *Emily's List* decision overturned part of the allocation regulation that sets limits on the amount of revenue those committees could contribute to non-federal activities. See *Emily's List v.*

1 Further, the available information regarding the loans and other alleged use of Committee
2 resources for the benefit of the Clinic does not suggest that the Committee should be operating
3 and reporting as a separate segregated fund with the Clinic as its connected organization.²⁶ An
4 organization that is not a political committee but which directly or indirectly establishes,
5 administers, or financially supports a political committee is a connected organization.²⁷ In
6 determining whether an entity is a connected organization of a political committee, the
7 Commission has considered whether the committee is financially independent of the
8 organization, and whether the entities maintain organizational independence.²⁸ In the current
9 matter, there is no information that the Committee receives financial support from the Clinic. In
10 fact, it is the Committee that has loaned funds to the Clinic, which were repaid. While there is
11 some personnel overlap as indicia that the entities are connected (*i.e.*, Burkhart is the registered
12 agent of the Clinic and the Director of the Committee; and an intern at the Committee later
13 worked at the Clinic), this is not sufficient to refute the Committee's assertion that it is
14 organizationally independent of the Clinic.²⁹ Furthermore, the Committee was established in

FEC, 581 F.3d 1, 21 (D.C. Cir. 2009). While *Emily's List* provides guidance as to the allocation of federal and non-federal funds by a nonconnected political action committee, its holding does not specify that nonconnected multicandidate committees can use their funds to operate independent for-profit businesses. Rather, its holding is in the general context of political activity. Similarly, the MUR 5878 Statement of Reasons cited in the Response is not directly on point as it concerns a state party committee's use of funds for federal and non-federal purposes. See Statement of Reasons, Vice Chairman McGahn, Comm'rs. Hunter & Petersen, MUR 5878 (Arizona State Democratic Central committee, *et al.*) ("SOR") at 10. Here, the Respondent, Trust Women PAC, is not a party committee and was allegedly using its funds for something other than political activity. Therefore, neither *Emily's List* nor the SOR in MUR 5878 are applicable to the situation at hand.

²⁶ Compl. at 5-7. See 2 U.S.C. §§ 431(7), 433(b) (requiring political committees to list any connected organization in its Statement of Organization).

²⁷ 2 U.S.C. § 431(7); 11 C.F.R. § 100.6.

²⁸ See, e.g., MUR 5830 (U.S.-Cuba Democracy PAC) (finding that the committee was financially and operationally independent).

²⁹ Resp. at 8-9.

2009, three years prior to the registration of the Clinic with the Kansas Secretary of State in 2012. Therefore, there is no information to suggest that the Committee is a connected organization of the Clinic.

Although the making of the loans to the Clinic do not themselves appear to result in any violations of the Act, the Complaint specifically alleges that the Committee disclosed receipt of a loan repayment of \$8,410.25 from the Clinic, but "listed no outstanding loans on its previous reports."³⁰ The Complaint further alleges that the Clinic's repayment of the \$8,410.25 in loans resulted in prohibited corporate and excessive contributions to the Committee because "depending on its tax status, the company may classify as a corporation under FEC regulations, and thus be prohibited from giving funds to a PAC."³¹ The Response does not address these allegations, except to concede that the Clinic has repaid all loans or disbursements to the Committee.³²

Debts and obligations owed to a political committee that remain outstanding must be continuously reported until extinguished.³³ Further, while the Act and the Commission's regulations permit political committees to make loans to any person, the source prohibitions apply to the repayment of those loans.³⁴

³⁰ Suppl. Compl. at 1-2 ; *see also* July Quarterly Report filed July 15, 2013.

³¹ Suppl. Compl. at 1; *see also* 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g).

³² Resp. at 7.

³³ 2 U.S.C. § 434(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

³⁴ *See* 2 U.S.C. §§ 434(b)(8), 441b(a); 11 C.F.R. § 100.52(b)(5). Advisory Op. 1980-130 (Fazio for Congress) concerned a nonfederal committee's loan repayment to a federal committee. The Commission opined that in repaying that loan the state committee may not use funds from corporations or labor unions even though such a repayment is not considered a contribution. AO 1980-130 at 2. In Advisory Op. 1992-28 (Leahy for U.S. Senator), the committee loaned \$50,000 to a non-profit corporation, with the agreement that the monies would be repaid within one year or upon request. The "final execution" of the transaction was contingent upon the Commission's approval of the loan. The advisory opinion request was made after the committee had loaned the

1 It is clear that the Committee failed to disclose the outstanding loans to the Clinic on its
2 original disclosure reports in violation of 2 U.S.C. § 434(b). While the disbursements for the in-
3 kind loans were timely reported by the Committee on its 2013 July Quarterly report, they were
4 not identified as outstanding loans to the Clinic until nearly a year later in March 2014. Further,
5 the additional \$7,000 direct loan to the Clinic was not reported by the Committee whatsoever
6 until March 2014. Thus, the Committee clearly violated 2 U.S.C. § 434(b)(8) by failing to
7 disclose the loans properly.

8 Further, because the Clinic is registered as an LLC, we cannot determine, whether the
9 Clinic's repayment of the principal amount of the loan to the Committee was made with
10 permissible funds because there is no publicly available information to indicate whether the LLC
11 is established as a corporation under the Internal Revenue Code.³⁵ If the Clinic elects to be
12 treated as a corporation for tax purposes, or if it has publicly-traded shares, then the repayment of
13 this loan to the Committee would be a prohibited corporate contribution.³⁶ Alternatively, if the
14 Clinic elects to be treated by the IRS as a partnership or individual member organization, then its
15 repayment of the loan is not considered a contribution, and is permissible under the Act and
16 Commission regulations.³⁷ Based on publicly available information, the Clinic does not have
17 publicly-traded shares. Therefore, the Clinic's tax status is necessary to determine whether the
18 loan repayment is permissible under the Act.

money to the non-profit. The Commission did not approve a loan repayment because the eventual repayment would be made with corporate treasury funds. Rather, the committee was permitted to "obtain the return" of its money within five days after receiving the final advisory opinion. AO 1992-28 at 2. In the more recent Advisory Op. 2011-16 (Dimension4, Inc.), concerning the repayment of a loan made by the Committee to its connected organization, a corporation Dimension4, the request did not garner sufficient votes to issue a final advisory opinion.

³⁵ See 11 C.F.R. § 110.1(g).

³⁶ See 11 C.F.R. § 110.1(g)(3).

³⁷ See 11 C.F.R. § 110.1(g)(2),(4).

1 Notwithstanding the apparent reporting violation and the potential violation connected to
2 the Clinic's repayment of the loan, the small amount at issue combined with the nature of the
3 potential violation that requires investigation, *i.e.* a potential prohibited contribution resulting
4 from the repayment of a permissible loan made by a Committee (a violation that the Commission
5 has not previously pursued in the enforcement context), causes us to conclude that an exercise of
6 prosecutorial discretion is warranted here.

7 Accordingly, we recommend that the Commission find no reason to believe that Trust
8 Woman PAC and Amber L. Lockner in her official capacity as treasurer, and Julie Burkhart,
9 violated 2 U.S.C. §§ 439a(b), 432(b)(3), and 433(b); dismiss as matter of prosecutorial discretion
10 violations of 2 U.S.C. § 434(b) stemming from the Committee's disclosure of its loans to the
11 Clinic; dismiss the allegations that Trust Woman PAC and Amber L. Lockner in her official
12 capacity as treasurer, violated 2 U.S.C. §§ 441b(a), and 441a(f); and dismiss the allegations that
13 Julie Burkhart and South Wind Women's Center, LLC, violated 2 U.S.C. §§ 441b(a) or
14 441a(a)(1)(C).³⁸

15 **B. Disclosure Reports**
16

17 The Complaint identifies other numerous reporting and filing errors and maintains that
18 the Committee has not filed "a single acceptable report since 2011."³⁹ It relies on Requests for
19 Additional Information ("RFAs") RAD sent to the Committee and two closed Administrative
20 Fines cases.⁴⁰ The Committee counters that it used best efforts to comply with the RFAs and its

³⁸ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

³⁹ See Resp. at 4.

⁴⁰ Compl. at 2-4. The closed Administrative Fines cases in which the Committee has paid fines are: (1) AF #2559, paid \$550 on Dec. 11, 2012, for failure to file the 2012 July Quarterly report; and (2) AF # 2686, paid \$3,712 in installments from July 2013 through December 2013, for failure to file the 2012 Post-General report.

1 reporting requirements and will file amended reports.⁴¹ *Id.* Additionally, the Response explains
2 that the Committee had problems with its vendor software.⁴²

3 Every political committee must have a treasurer, identify the treasurer on its Statement of
4 Organization, and amend that statement within ten days of any change.⁴³ In most cases, once
5 political committees pass certain financial thresholds, they must file their reports and statements
6 electronically.⁴⁴ All political committees must file regular reports of their receipts and
7 disbursements, and the treasurer must sign and file them.⁴⁵ A political committee other than an
8 authorized committee must report, among other things, its cash-on-hand as of the beginning of
9 the reporting period, its total contributions received, and its total operating expenditures.⁴⁶ It
10 must also itemize the full name and address of each person who received aggregate annual
11 disbursements in excess of \$200, and provide the date, amount, purpose of the expense.⁴⁷ Such a
12 committee must itemize contributions from a single contributor if those aggregate annual
13 contributions are greater than \$200.⁴⁸

14 Although the Complaint identifies numerous categories of errors the Committee made,
15 only two merit more than cursory discussion. First, the Complaint contends that the

⁴¹ *Id.*

⁴² Resp. at 5.

⁴³ See 2 U.S.C. §§ 432(a), 433(b)(4), (c); 11 C.F.R. §§ 102.2(a)(1)(iv), (2), 102.7(a).

⁴⁴ See 11 C.F.R. § 104.18.

⁴⁵ See 2 U.S.C. § 434(a)(1), (b); 11 C.F.R. § 104.1(a), 104.3(a), (b). The required number and timing of these reports depends on the committee's type and, to some extent, the committee's choice. 2 U.S.C. § 434(a)(2) – (4).

⁴⁶ See 11 C.F.R. §§ 104.3(a)(1), (2), (b)(1), (b)(3).

⁴⁷ See 11 C.F.R. § 104.3(b)(1)(A), (3).

⁴⁸ See 11 C.F.R. § 104.3(a)(4)(i).

Committee's cash-on-hand figures on its reports were consistently wrong.⁴⁹ The Response states that the Committee has either fixed all of these errors, or will do so.⁵⁰ We reviewed all of the Committee's reports from 2011 to the present, and identified the following remaining cash-on-hand ("COH") discrepancies:

- (1) 2011 October Quarterly Report: closing year-to-date COH discrepancy of \$243.73 and a detail summary amount for unitemized contributions that was off by \$28,567.73;
- (2) 2011 Year End: \$5,464.61 discrepancy between closing COH and calendar year-to-date COH, a discrepancy between the 2011 Year End and 2011 October Quarterly Reports of \$5,707.34;
- (3) 2012 April Quarterly Report: discrepancy of \$8,968.43 between the opening and the ending COH balances;
- (4) July 2012 Quarterly Report: closing COH discrepancy of \$13,372.34, and discrepancies in the calendar year-to-date summary amounts of total receipts and itemized and unitemized contributions of \$19,042.17;
- (5) 2012 October Quarterly Report: opening COH discrepancy of \$19,465.61; and
- (6) 2012 Year End Report: opening COH discrepancy of \$19,405.61; and
- (7) 2013 October Quarterly Report: opening COH discrepancy of \$18,965.61, a closing COH discrepancy of \$19,465.61, and calendar year-to-date summary amount discrepancies of \$60,492.38.

Nevertheless, we recommend that the Commission dismiss the Committee's apparent reporting errors because they do not meet any referral threshold. The Committee has committed to fixing these cash-on-hand reporting errors, and the Commission should help that process by cautioning the Committee and pointing out these errors.

⁴⁹ See Compl. at 3-4.

⁵⁰ See Resp. at 4.

1 Second, the Complaint alleges, without any support, that since July 2011, the Committee
2 failed to properly report "at least \$72,000" of unitemized contributions.⁵¹ The Response argues
3 that the Committee did not have to itemize contributions of \$200 or less, and the Complaint's
4 accusations are legally insufficient and factually unsubstantiated.⁵² The mere fact that the
5 Committee reported receiving more than \$72,000 in unitemized contributions does not
6 demonstrate reason to believe that it violated the Act. Commission regulations only require
7 Committees to itemize a contribution from a person during the reporting period if the person's
8 contribution (or contributions) aggregate more than \$200 in a calendar year.⁵³ Thus, the
9 Committee's explanation why it did not itemize the contributions is reasonable, and we have no
10 contrary information.

11 The Complaint's remaining allegations either describe *de minimis* violations or are
12 unfounded. For example, the Complaint alleges that the detailed summary page of the
13 Committee's October 2012 Quarterly and 2012 Year-End Reports failed to include three \$1,000
14 contributions the Committee made.⁵⁴ The Committee concedes that these contributions, though
15 disclosed on Schedule B as disbursements, were not shown on the detailed summary pages, line

⁵¹ Comp. at 4.

⁵² Resp. at 9. See 11 C.F.R. §§ 111.4(c), (d)(2).

⁵³ 11 C.F.R. § 104.3(a)(4).

⁵⁴ See October 2012 Quarterly 2012 Year-End Reports. The Committee's reports show that it made separate \$1,000 contributions to Friends of Laura Ruderman on August 8, 2012; Kelda for Congress on August 10, 2012; and to Rosa Meza Harrison for Congress on October 31, 2012. The Complaint further alleges that the Committee made the same error on its 2012 Post-General Report. See Compl. at 2. The Committee did not file this report electronically, the Commission did not accept it, and in AF #2686, the Commission fined the Committee for its improper filing. Thus, there is technically no error because the Commission rejected the Committee's paper Post-General report. Further, the Committee's failure to file a proper electronic report has already been resolved in AF #2686.

23, and it promises that the Committee will further amend its reports to correct these errors.⁵⁵

We believe that this violation is minor and is best addressed through a cautionary letter.

Next, the Complaint alleges that the Committee failed to properly classify disbursements made after the August 2012 primary because it described them as "2012 primary disbursements," on its 2012 Year-End Report and its 2013 April and July Quarterly Reports.⁵⁶ The Response argues that the Committee simply checked the "Primary" disbursement box by mistake and that it will amend its reports.⁵⁷ We believe that these errors are also best addressed through a dismissal with a cautionary letter.

In addition, the Complaint alleges that the Committee consistently failed to report or itemize its disbursements. The Complaint points to the 2013 April Quarterly, which disclosed \$13,575 in disbursements on the detailed summary page, but only \$11,336.54 in itemized disbursements on Schedule B; and the 2013 July Quarterly Report, which discloses total disbursements of \$5,488.73, and itemized disbursements \$3,637.06.⁵⁸ The Response argues that under 11 C.F.R. § 104.3, the Committee only had to itemize disbursements that aggregate more than \$200 in a year to a single payee, and it has complied with this requirement in all cases cited by the Complaint.⁵⁹ We believe the Committee's explanation of the disbursement discrepancies is reasonable. The Committee's unitemized disbursements total \$2,239.38 for its 2013 Amended April Quarterly Report and \$1,713.23 for its 2013 Amended July Quarterly Report, and these

⁵⁵ See Resp. at 3. Before the Committee responded to the Complaint, it amended its 2012 October Quarterly Report on March 13 and August 5, 2013, and its 2012 Year End Report on August 5, 2013, but the amendments did not correct the line 23 errors.

⁵⁶ Compl. at 2, 4.

⁵⁷ *Id.* at 3 - 4.

⁵⁸ *Id.*

⁵⁹ Resp. at 4.

1 figures are consistent with the discrepancies noted by the Complainant. Further, the total amount
2 of the discrepancies – approximately \$4,000 – does not appear significant enough to pursue
3 further.

4 The Complaint further alleges that someone other than the treasurer signed the
5 Committee's reports because Lockner began filing the reports in November 2012, which was
6 before the Committee amended its Statement of Organization to name her as the new treasurer.⁶⁰

7 The Committee explains that it tried unsuccessfully to amend its statement twice on paper, and
8 that the Commission knew the Committee had changed treasurers because the Commission sent
9 it a letter on November 13 listing Lockner as the treasurer.⁶¹ The Committee's failure to timely
10 amend its Statement of Organization under 2 U.S.C. § 433(c) appears to be a technical violation.

11 When Lockner signed the original 2012 Year-End and 2013 April and July Quarterly Reports,
12 the Committee had not yet amended its Statement of Organization, although it tried to do so
13 twice.⁶² The Committee filed most of its amended reports after Lockner assumed her duties as
14 treasurer, so it does not appear that she was unauthorized to do so. While the Commission
15 should dismiss this allegation, a caution here seems unnecessary as the Committee has updated
16 its Statement of Organization and it is indisputably aware of its obligation to file electronic
17 documents.

⁶⁰ See *id.* Compl. at 9.

⁶¹ Resp. at 6 – 7.

⁶² Lockner also filed an amendment to the 2012 April Quarterly Report on January 21, 2013; amendments to the 2012 July Quarterly Report on March 12 and August 5, 2013; amendments to the 2012 October Quarterly report on March 12, and August 5, 2013; and amendments to the 2012 Year End Report on January 16, April 15 and August 5, 2013.

1 Finally, the Complaint alleges that the Committee made disbursements to "non-existent
2 entities located in the same office as the committee."⁶³ According to the Response, the
3 American Action League is a 501(c)(4) non-profit organization incorporated in Missouri and the
4 Trust Women Foundation is a 501(c)(3) corporation incorporated in the District of Columbia,
5 and both are in good standing.⁶⁴ Further, the disbursement to the Committee's non-federal
6 account was proper, and it was not required to register the account with the Commission or the
7 IRS.⁶⁵ Public filings by the named entities support the Respondents' denials.⁶⁶ Further, the
8 Committee's \$9,750 transfer to its non-federal account was proper.⁶⁷ Thus, the allegations are
9 unfounded.

10 Accordingly, we recommend that the Commission dismiss these allegations that Trust
11 Women PAC and Amber L. Lockner in her official capacity as treasurer, violated 2 U.S.C.
12 § 434(b) because none of the Committee's reporting and filing errors exceed the applicable
13 referral thresholds, either individually or in the aggregate. Further, the Committee has shown a
14 commitment to improve its compliance by among other things, filing amended reports; and it
15 hired an auditor to correct any remaining mistakes. To help the Committee and its auditor target
16 and fix these mistakes, we recommend that the Commission issue a detailed cautionary letter.

⁶³ Compl. at 7. Specifically, the Complaint points to a \$2,000 disbursement to American Action League for GOTV calls; a \$700 disbursement to Trust Women Foundation, Inc., for a utilities reimbursement; and a \$9,750 disbursement to Trust Women PAC (Non-Federal) for GOTV calls. *See id.* at 8; *see also* 2012 Amended Year End Report.

⁶⁴ *See id.* at Attach. C.

⁶⁵ *Id.* at 10.


⁶⁶ According to the business filings with the Missouri Secretary of State, The American Action League has an office address in Springfield, Missouri, and is a domestic non-profit corporation created on October 25, 2010. It changed its name to Trust Women Action League in October 2013. The District of Columbia corporate registration filings confirm that Trust Women Foundation, Inc., incorporated in the District of Columbia on June 24, 2010.

⁶⁷ *See* 11 C.F.R. § 106.6. (explaining how non-authorized committee should allocate expenses between federal and non-federal activities and directing transfers for allocable expenses).


IV. RECOMMENDATIONS

1. Find no reason to believe that Trust Women PAC and Amber L. Lockner in her official capacity as treasurer, and Julie Burkhardt, violated 2 U.S.C. §§ 439a(b), 432(b)(3), 433(b);
2. Dismiss the allegations that Trust Women PAC and Amber L. Lockner in her official capacity as treasurer, Julie Burkhardt, and South Wind Women's Center, LLC, violated 2 U.S.C. § 441b(a);
3. Dismiss the allegations that South Wind Women's Center, LLC, violated 2 U.S.C. § 441a(a)(1)(C);
4. Dismiss the allegations that Trust Women PAC and Amber L. Lockner in her official capacity as treasurer, violated 2 U.S.C. § 441a(f);
5. Dismiss the allegations that Trust Women PAC and Amber L. Lockner in her official capacity as treasurer, violated 2 U.S.C. § 434(b) but send a letter of caution;
6. Approve the attached Factual and Legal Analysis;
7. Approve the appropriate letters; and
8. Close the file.

Daniel A. Petalas
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5-8-14
Date